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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/099,977

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Francis Emmerson

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09/29/2009

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BANK OF AMERICA PLAZA

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CHARLOTTE, NC 28280-4000

EXAMINER

SAX, STEVEN PAUL

ART UNIT

PAPER NUMBER

2174

MAIL DATE

DELIVERY MODE

09/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/099,977	EMMERSON ET AL.	
	Examiner	Art Unit	
	Steven P. Sax	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-18,20-22,24-39 and 45-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-18,20-22,24-39 and 45-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)
2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____. | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) <input type="checkbox"/> Notice of Informal Patent Application
6) <input type="checkbox"/> Other: _____. |
|---|--|

DETAILED ACTION

1. This application has been examined. The amendment filed 5/26/09 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-18, 21-22, 24-39, 47-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebel et al (2003/0009203) and Kosmynin (2001/0054084).

4. Regarding claim 13, Lebel et al show: An apparatus comprising a processor configured to generate content comprising validation data and other data which comprises software (abstract, para 17, 21, 141), the content being stored at the apparatus (para 141, 142); download the content to a terminal, upon receipt of a signal transmitted by the terminal to connect to the apparatus, the validation data of the content downloaded from the apparatus being configured to permit the terminal to determine whether the content was securely downloaded and that the content originated from the apparatus (para 142, 143, 145), wherein the processor is configured to download the content by downloading the validation data and the other data

concurrently from the apparatus together in a single download file (para 125, 126, 143, 156, 159).. Lebel et al. do not go into the details that the validation data comprises a download transport protocol header and mime data which identifies the content and a type of the software, wherein the terminal is configured to further evaluate the mime data to determine whether the content is correct and evaluate the header to determine whether the apparatus is an authorized apparatus which is an approved source for downloading the content, but do show evaluating download transport protocol to determine secure download. Furthermore, Kosmynin does have this to evaluate download transport protocol to determine secure download (para 345, 408, 476, Figures 3, 5, 6). It would have been obvious to a person with ordinary skill in the art to have this in Lebel et al, because it would allow efficient evaluation download transport protocol to determine secure download.

5. Regarding claims 14, in addition to that mentioned for claim 13, Lebel et do not specifically mention the server, but do mention efficiently downloading content. Furthermore, Kosmynin et al have the server for efficient downloading of content (abstract, Figures 2A-B, 3, 4, 5 for example). It would have been obvious to a person with ordinary skill in the art to have the server in Lebel et al, as it would provide efficient downloading of the content.

6. Claims 17-18, 20, 50 show the same features as claim 14 and are rejected for the same reasons.

7. Regarding claims 15 and 21, the memory automatically stores the downloaded content as a default memory setting after the validation data is evaluated (Lebel et al para 52, 143).

8. Regarding claims 16, 22, and 24, Kosmynin shows the validation of data has a HTTP header which the terminal is configured to examine (para 345, 408, 476). The obviousness to have the server downloading abilities which include the HTTP header, into Lebel et al is the same as that mentioned in paragraph 4 of this Office Action.

9. Regarding claims 25-29, the validation data identifies the apparatus/server and indicates whether the content has been accepted by the terminal/apparatus (Level et al para 142, 143, 145 with the obviousness for the server of Kosmynin as explained in paragraph 4 of this Office Action).).

10. Regarding claims 30-34, the content is rejected if the validation data indicates the content did not originate from the apparatus/server (Lebel et al para 92, 111, 151 with the obviousness for the server of Kosmynin as explained in paragraph 4 of this Office Action).

11. Regarding claims 35-39, the content is installed after it is validated as originating from the server/apparatus (Lebel et al para 92, 111, 151 with the obviousness for the server of Kosmynin as explained in paragraph 4 of this Office Action).

12. Regarding claims 47 and 53, the software has multimedia content (Lebel et al para 42, 143).

13. Regarding claims 48, 51, 54, 56, 58, the content is determined to originate from the server/apparatus based on codes in the validation data identifying the server/apparatus (Lebel et al para 92, 111, 142, 143, 145 with the obviousness for the server of Kosmynin as explained in paragraph 4 of this Office Action).

14. Regarding claims 49, 52, 55, 57, the content is evaluated as correct and the apparatus/server is determined to be authorized for downloading the content (Level et al para 92, 111, 142, 143, 145 with the obviousness for the server of Kosmynin as explained in paragraph 4 of this Office Action).

15. Claims 45-46 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebel et al (2003/0009203) and Kosmynin (2001/0054084).and Nonaka et al (7073073).

16. Regarding claims 45-46 and 59, in addition to that mentioned for claims 13 and 20 respectively, neither Lebel et al nor Kosmynin show determining whether a user has paid a tariff for the requested content and that the download occurs only if the determination reveals that the user has paid a tariff for the content, but do show efficiently downloading when certain criteria are met by the receiving side. Furthermore, Nonaka et al do show this for efficiently downloading when certain criteria are met by the receiving side (para 121, 235, 237, 565). It would have been obvious to a person with ordinary skill in the art to have this in the system of Lebel et al as modified by Kosmynin, because it would allow efficiently downloading when certain criteria are met by the receiving side.

17. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven P. Sax whose telephone number is (571) 272-4072. The examiner can normally be reached on Monday thru Friday, 8:30 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Chow can be reached on (571) 272-7767. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven P Sax/
Primary Examiner, Art Unit 2174

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